

THE
MYSORE GAZETTE

834.

FROM JULY TO DECEMBER 1921.



BANGALORE

PRINTED AND PUBLISHED BY THE SUPERINTENDENT, GOVERNMENT PRINTING

1922

835
(b) The number of such ryots who have been awarded wet-lands to the extent of 10 acres and above in exchange for dry-lands which have been submerged by the Krishnarajasagara?

Mr. A. R. Banerji, C.S.I., C.I.E. replied.

(a) The Government will make enquiries as to the facts of this case and furnish the information to the member.

(b) The information cannot be furnished without making an elaborate enquiry into a large number of cases, which the Government do not consider would serve any useful purpose.

Mr. M. Subbiah asked.

5. Will the Government be pleased to state—

(a) How many Mysoreans are employed as Professors in the Mysore and Bangalore Colleges and how many outsiders?

(b) Of the outsiders, how many have left service and why?

Mr. A. R. Banerji, C.S.I., C.I.E. replied.

(a) A statement furnishing the information is laid on the table. (APPENDIX B.)

(b) Three have left since August 1920, two owing to resignation and one who was a lent officer reverted to British Service to take up a special appointment.

Mr. M. Subbiah asked.

6. Have any steps been taken by the Government to give effect to the order on the Education Memorandum, since the issue of the order 6 months back, and if none has been taken till now when would they do it?

Mr. A. R. Banerji, C.S.I., C.I.E. replied.

Government are taking the necessary steps to give effect to the order on the Education Memorandum in the current year as far as the finances permit.

Mr. H. G. Basavappa asked.

7. Will the Government be pleased to state on what principle the freeships and scholarships in the college classes have been distributed and to furnish information on the following points:—

(1) the total number of freeships and scholarships available;

(2) the numbers of the above given to Brahmins and non-Brahmins respectively;

(3) the names of the members of the Committee appointed to distribute the freeships and the scholarships in the college classes?

Mr. A. R. Banerji, C.S.I., C.I.E. replied.

The member's attention is drawn to Government Orders Nos. 928-30—Edn. 12-16-156, dated 25th July 1917, 2517-18—Edn. 65-17-18, dated 17th September 1918, 11874-6—Edn. 65-17-20, dated 6th June 1919, C. 197-271—Edn. 24, dated 24th January 1894 and No. 3948—Edn. 42-17-36, dated 13th October 1917 on the subject of freeships and scholarships in college classes, copies of which will be furnished to the member.

(1) and (2). A statement giving information under (1) and (2) is laid on the table. (APPENDIX C.)

(3) The member is referred to the Government Order No. 3948—Edn. 42-17-36, dated 13th October 1917, quoted above.

Mr. B. Abdur Rahmon asked.

8. Will the Government be pleased to state—

(1) the qualifications necessary to become a licensed electrical contractor;

- (2) the control, the Electrical Department has over these contractors;
- (3) the names of the licensed electrical contractors for the year 1921-22 with the qualifications of each;
- (4) has every one of the electrical contractors entertained the services of a Technical Assistant? If not, why?
- (5) Is it essential that even those electrical contractors who are working under the Department as such for the past ten or more years should also be selected every year? If so, why?
- (6) Is there any standard fixed with regard to general education, technical ability, financial stability, etc., of a licensed electrical contractor? If so, what?
- (7) Are there any rules for the guidance of the Committee that is appointed every year for the selection of electrical contractors? Can they be placed on the table?

Mr. A. R. Banerji, C.S.I., C.I.E. replied.

(1), (2) and (4) to (7). The selection of electrical contractors is under departmental control. The Government will examine the rules and practice obtaining in the department on the subject and see if any changes are necessary.

(3). The member is referred to the *Mysore Gazette* dated 18th August 1921 Part VI, page 485.

Mr. B. V. Ramaswamy Chetty asked.

9. (1) Will the Government be pleased to state how many Foreign scholarships have been awarded during the last 12 years, and the names of candidates to whom they were awarded?

(2) Will the Government be pleased to state with reference to each of the scholars:—

- (a) The year in which the scholarship was given;
- (b) The period required to complete the course of study taken up by the scholar;
- (c) The year in which such scholar passed the examination and how his services were utilised?

(3) Will the Government be pleased to state—

- (a) The names of candidates who failed to complete their courses of study in Foreign countries;
- (b) the amount of stipends continued to be given to such scholars from time to time;
- (c) what steps are taken to watch the satisfactory progress made by the stipendiaries?

(4) Will the Government be pleased to reserve a certain number of foreign scholarships to be given to deserving members of the backward classes in view of the fewer number of such scholars taking advantage of the Foreign Scholarships?

Mr. A. R. Banerji, C.S.I., C.I.E. replied

(1), (2) and (3) Information has been called for and will be furnished when received.

(4) The existing rules provide for the reservation of one of the four free scholarships for a candidate for the educationally backward communities if a suitable candidate is forthcoming.

Mr. B. V. Ramaswamy Chetti asked.

10. Will the Government be pleased to state whether it is a fact that income-tax was recovered by means of warrants on several persons in Mysore by the Special Collector of Income-tax?

837

Mr. Mir Hamza Hussein replied.

Yes. Warrants had to be issued in some cases as provided by the Income-tax Regulation.

Mr. H. Krishna Rao asked.

11. Will the Government be pleased to state—

(a) Was there any Government Order sanctioning the grant of the whole of the proceeds of Devaraja Bahadur's Charity Fund for the education of the widows?

(b) Will the Government be pleased to place on the table the records connected with the Devaraja Bahadur's Charity Fund?

Mr. A. R. Banerji, C.S.I., C.I.E. replied:

Papers connected with the subject are laid on the table. (APPENDIX D.)

* Mr. N. S. Nanjundaiya asked.

12. Will the Government be pleased to state:—

(a) Whether one Mr. C. Nagappa, B. A., LL. B., the University Librarian, has been placed under suspension?

(b) If so, when did the period of suspension commence, and has any definite period of suspension been fixed?

(c) Is it true that he has also tendered his resignation and, if so, has it been accepted?

(d) What are the reasons that have delayed the final disposal of the matter? and

(e) When is the matter likely to be disposed of finally?

Mr. A. B. Banerji, C.S.I., C.I.E. replied.

Mr. Nagappa was placed on suspension with effect from 17th July 1920 pending enquiry into his conduct. During the pendency of this question he tendered resignation which could not be accepted. The delay in the disposal of the matter is due to the opinion of the members of the University Council not having been received and the case will be disposed of as soon as the same is received and considered by Government.

Mr. M. Anantiah Setty asked.

13. Will the Government be pleased to state—

(1) If they are aware that the working expenses of the State Railway are so high as 75 per cent nearly?

(2) If so, what is the cause of such high percentage of working expenses?

(3) If it is due to heavy establishment charges, what steps they have taken to reduce the extra and unnecessary establishment?

Mr. A. R. Banerji, C.S.I., C.I.E. replied.

(1) Yes.

(2) Greatly enhanced cost of materials, increased cost of coal and substantial rise in wages.

(3) The establishment is not in excess of requirements.

Mr. G. Paramasiviah asked.

14. Will the Government be pleased to state—

(1) The total amount of money which remains with them unspent out of the local contributions made for the construction of school buildings and for the pay of teachers?

(2) How do they propose to spend the same in future?

* Mr. N. S. Nanjundaiya being absent, the question was put by Rao Bahadur M. C. Rangiar.

Mr. A. R. Banerji, C.S.I., G.I.E. replied.

(1) So far as information is available at present, the total amount of contributions deposited is Rs. 72,383-6-2 for the construction of buildings for 270 schools. Regarding contributions for teachers' salaries it is not possible to give statistics that will be of much value, since the amounts collected are not as a rule deposited in the treasuries so that neither the total amounts contributed nor the balance on hand come to the notice of Government.

(2) Such of the contributions for buildings as still remain unspent will be utilised for the construction of buildings in the order of urgency as the budget grants for the purpose permit and in accordance with a suitable programme.

If in either case the parties desire the refund of their contributions, the amounts will be refunded.

Mr. B. N. Vijayadeva asked.

15. Will the Government be pleased to state—

(a) If they are aware that there has been an embezzlement in the market realizations of the Bangalore City Municipality?

(b) If so, what is the exact amount?

(c) Whether auditors, certified or Government, have been auditing the said accounts?

(d) Whether the matter was placed before the Municipal Council?

(e) If not, why not?

(f) Whether the amount has been made good; if not, why not?

Mr. Mir Hamza Husein replied.

(a) Yes.

(b) to (f). The Government have no definite information on the subject, but it is understood that the matter is under the investigation of the Municipal Council.

III. BILLS.

1. The Mysore Leper Bill.

RAJAMANTRAPRAVINA P. RAGHAVENDRA RAO.—Sir, I rise to move that leave be granted to introduce the Mysore Leper Bill.

The question of introducing measures to control the lepers in the State has been under consideration for sometime past. In 1915, Government ordered that the proposal to introduce legislation for the compulsory segregation of lepers might lie over, and, in a subsequent order of the same year, they observed that the lepers might be placed under some kind of observation, and requested the Sanitary Commissioner and the Deputy Commissioners of Districts to suggest measures which were calculated to give effect to that intention. It took two years to receive the suggestions of the Deputy Commissioners, and in submitting them to Government, the Sanitary Commissioner observed that, while some of the measures suggested were impractical, and others involved very heavy cost, the compulsory segregation of lepers by statute would be very unpopular and exceedingly difficult to put into practice.

Doubtless, members are aware that in the sister States of Travancore and Cochin, Regulations for the control of lepers have existed for sometime already. With a view to ascertain the terms of these Regulations, they were examined, and it was seen that they provided only for the segregation and treatment of pauper lepers and the control of lepers following certain callings. It was suggested at the time that the laws in force in British India and in the State of Baroda might also be examined. A comparison of the British Indian Act and the Regulations in force in the Indian States above named has shown that the provisions in all of them are identical, only slight variations being made to suit local conditions.

A draft, based mainly on the British Indian Act, was prepared in the Legislative Branch and referred to the present Sanitary Commissioner for opinion. He submitted that to attain the object in view, viz., the compulsory segregation of pauper lepers and the prevention of lepers from pursuing certain callings, the maintenance of a list of all lepers, pauper or otherwise, resident in any area, was necessary, and accordingly suggested that a provision might be made in the draft Bill for the registration of all lepers. It was also suggested that in the case of lepers, who were not paupers but who were at the same time unable to take care of themselves or to be looked after by friends and relations so as to prevent the spread of the disease, they may be sent to the Asylum if a Magistrate was satisfied on the report of a Police or a Sanitary Officer of sufficient rank, and after holding an inquiry it was found that it was necessary to do so. The draft Bill was next forwarded to the Government Advocate for his scrutiny and certain amendments were suggested by him in order to remove certain defects noticed by him in it and also to make the working of the Regulation cause as little harassment as possible.

The Bill as now presented to the members embodies all the amendments suggested by the various authorities concerned and appears to meet the requirements of the time.

As members are aware, leprosy is a disease which afflicts mankind in a terrible and dangerous form. Recent scientific investigations have revealed the fact that it is due to the action of a specific bacillus which has been isolated. At one time, and not so very long ago either, there was an idea that the disease was attributable to the use of an exclusive fish diet, but this theory does not receive any countenance at present. Leprosy seems to have existed from very ancient times and appears to have baffled the attempts of the physicians of all ages to cure it. In recent years, various cultural and pharmaceutical preparations have been tried, but only cautious reports of cure have been received and that only in a very few cases. It can, therefore, be said, as in the case of another dreadful disease tuberculosis, that the cure is neither known nor certain.

The disease is insidious and deadly and persons who deal with lepers are exposed to great risks. The lot of lepers is an appalling one and while it deserves all the sympathy that can be given still it behoves people who come into contact with lepers, to exercise all the care they can to guard against contagion. In this connection, I may refer to the heroism of the Jesuit Priest, Father Damien who did magnificent work among the lepers in the Hawaii Islands about two decades ago and his subsequent tragic death. It behoves every community to see that individuals suffering from this dire disease are properly segregated and taken care of in such a manner as to cause the least menace to the community at large. It is on account of these considerations that it has been considered necessary to introduce legislation in this behalf. No executive order of Government can possibly avail in such matters and it is only with the authority of statutory enactment that something can be attempted.

I do not think it is necessary for me to tax the patience of the members by a further disquisition on this subject. So, with these few remarks, I beg to move that leave be granted to introduce the Mysore Leper Bill.

MR. B. RAMASWAMAYYA.—I beg to second the motion.

RAJAKARYAPRASKTHA RAO BAHADUR M. SHAMA RAO.—I do not think there will be any opposition to this.

The motion was then put to vote and carried.

2. BILL TO AMEND THE INDIAN SUCCESSION ACT.

(As applied to Mysore)

MR. MIR HAMZA HUSEIN.—Sir, section 256 of the Indian Succession Act as applied to Mysore runs as follows:—

“Every person to whom any grant of administration shall be committed shall give a bond to the Judge of the District Court to enure for the benefit of the Judge

for the time being with one or more surety or sureties, engaging for the due collection, getting in or administering the estate of the deceased, which bond shall be in such form as the Judge shall from time to time by any general or special order direct".

The use of the words 'grant of administration' in the section led to a doubt in British India as to whether a security bond was to be required in both administration and probate cases from the grantees thereof or in administration cases only. There was a difference of opinion between the Madras and the Calcutta High Courts in this matter, the former restricting the section to the administration cases only and the latter applying it to both classes of cases. This conflict of decisions between the two High Courts led to the passing of the amending Act VI of 1889 of the British Indian Legislature which introduced the words 'letters of' before the word 'administration' in the section, thus making it clear that in letters of administration cases only security was required to be furnished.

The question however was not raised in our Courts till recently and so the amendment of the Act, as in force in our State, was not undertaken. The question has since been raised by the South Mysore Planters' Association and the Government recognise the necessity to amend the section. A Bill has accordingly been prepared on the lines of the Government of India Act of 1889 and opportunity has also been taken to exclude from the scope of the section cases of limited grants under section 212.

With these remarks, I beg to move that leave be granted to introduce the Bill to amend the Succession Act.

MR. R. N. S. IYNGAR.—Sir, I beg to second the motion.

The motion was put to vote and carried.

3. The Mysore Petroleum Bill.

RAJAMANTRAPRAVINA P. RAGHAVENDRA RAO.—Sir, at the meeting of the Legislative Council, held on the 27th June last, leave was granted to introduce the Mysore Petroleum Bill. Copies of the proposed Bill have been printed and circulated since to the members. I have nothing to add to what I said at the time leave was granted to introduce the Bill and so I now beg leave to move that the Bill be taken as read in Council.

MR. K. MATTHAN.—Sir, I beg to second the motion.

The motion was put to vote and carried.

RAJAMANTRAPRAVINA P. RAGHAVENDRA RAO.—Sir, I beg to move that the Bill be referred to a Select Committee consisting of—

- (1) Mr. Cadambi.
- (2) " K. Matthan.
- (3) " Venkataramaia.

- (4) Mr. Ananthiah Setty.
- (5) " Abdhur Rahman.
- (6) The Govt. Advocate and myself.

MR. K. MATTHAN.—Sir, I beg to second the motion.

The motion was put to vote and carried.

4. The Identification of Prisoners Bill.

MR. A. R. BANERJI, C.S.I., C.I.E.—Sir, the motion that stands in my name is similar to the one that has been carried by the Council. I beg to move that the 'Bill for the Identification of prisoners' be read in Council. On the 27th June last, my learned colleague Mr. Mir Hamza Husein explained the main provisions of the Bill, which followed exactly the lines of the British Act, XXIII of 1920. At this stage I do not think it is necessary for me to say very much more. I therefore beg to move that the Bill for the Identification of Prisoners be read in Council.

MR. A. SUBRAMANYA IYER.—Sir, I beg to second the motion.

The motion was put to vote and carried.

(6) Mr. A. R. BANERJI, C.S.I., C.I.E.—Sir, I beg to move that the Bill be referred to a Select Committee consisting of the following gentlemen:—

- | | |
|-------------------------------|----------------------------|
| 1. Mr. A. Subramanya Iyer. | 5. Mr. H. Chenniah. |
| 2. Dr. H. B. Mylvaganam. | 6. " H. Venkatramaiya. |
| 3. Mr. K. P. Puttanna Chetty. | 7. " R. N. S. Iyengar, and |
| 4. " C. S. Balasundaram Iyer. | myself. |

MR. A. SUBRAMANYA IYER.—Sir, I beg to second the motion.

The motion was put to vote and carried.

5. The Mysore Prevention of Adulteration Bill.

MR. MIR HAMZA HUSEIN.—Sir, the Bill to prevent the adulteration of food stuffs, which was read in Council and referred to a Select Committee at the meeting of the Council held on 29th March 1921, has since been considered by the Select Committee and their report published in the Gazette. In presenting the report of the Select Committee and the Bill as amended by them for consideration in this Council, I wish to point out that the two amendments suggested by them do not affect the principle of the Bill, and one of them, *viz.*, the omission of proviso (iii) to clause 5(1), is calculated to ensure that food stuffs offered for sale are on no account adulterated so as not to be up to the standard of purity prescribed, whether with or without notice to the purchaser. Mr. C. S. Doraswami Iyer dissented from the view of the majority of the members of the Select Committee in regard to this proviso, and urged its retention for reasons explained in his minute. The point was discussed at length in the Select Committee, with particular reference to the practice obtaining in the bazaar for shopkeepers to sell adulterated ghee with the labels 'Ghee mixed with oil' 'Ghee mixed with fat' and so on, and the majority of the members considered that even with such a notice to the purchaser, sale of such adulterated stuff should not be permitted. *Per contra*, it was argued by Mr. Doraswami Iyer, that the admixtures referred to and other similar ones may be required for particular purposes by purchasers and that there is no harm in a vendor putting them up for sale, with clear notice of their nature and quality, as thereby he practises no deception and the purchaser is not in fact deceived, when he knowingly buys the stuff. After considering all aspects of the matter, the Select Committee held that since the object of the Bill is to make the sale of adulterated food impossible, particularly of milk, cream, butter, etc., referred to in clause 5(1)(d), in regard to which standards of purity are to be prescribed by Government, admixtures such as those alluded to should on no account be allowed to be sold, as otherwise under the cloak of giving notice, tradesmen can evade the law and frustrate the very object of Government in introducing the measure.

It is not necessary for me to go into the other provisions of the Bill, as I have already explained the scope of the Bill when asking for leave to introduce it in the Council. So I now beg to move that the report of the Select Committee and the Bill as amended by them be taken into consideration.

MR. B. RAMASWAMIYA.—Sir, I beg to second the motion.

The motion was put to vote and carried.

MR. MIR HAMZA HUSEIN.—Sir, since no further amendments to the Bill have been proposed, I next beg to move that the Bill as amended by the Select Committee be passed.

MR. B. RAMASWAMIYA.—Sir, I beg to second the motion.

The motion was put to vote and carried.

6. Bill further to amend the Mysore Registration Regulation, 1903.

MR. MIR HAMZA HUSEIN.—Sir, as explained by my learned colleague, the Second Member of Council, when asking for leave to introduce the Bill, at the meeting of Council on the 29th March last, provision is made in the amending Bill for the payment of Registration fees either in cash or by means of stamps affixed to the document, as the Government may from time to time direct.

At the meeting of the Council held on the 29th June, the Bill was referred to the Council, and on the motion of my colleague, it was decided not to refer the Bill to the Select Committee as it involved the amendment of a single section. The Bill is now in the last stage of the Bill and as no amendment to the Bill has been proposed, I beg to move, under Rule 45 of the Rules for the conduct of business of the Council, that the Bill be passed.

MR. K. MATTHAN.—Sir, I beg to second the motion.

The motion was put to vote and carried.

7. Bill to amend the Mysore Police Regulation, 1908.

MR. A. R. BANERJI, C.S.I., C.I.E.—Sir, I beg to move that the Bill be passed. This is a very simple amendment Bill, which as explained by my learned colleague on the 27th June last at the meeting of this Council, relates to only one section, Section 56 of the existing Regulation, and that to the use of lights by police during certain hours after sunset irrespective of the fact whether there is moon-light or not. This Council agreed on the last occasion that this amendment was not of such an elaborate nature as to necessitate its being referred to a Select Committee. I have now only to put the motion before the House, viz., that the Bill be passed into law.

MR. A. SUBRAMANYA IYER.—Sir, I beg to second the motion.

The motion was put to vote and carried.

IV. RESOLUTIONS ON MATTERS OF GENERAL PUBLIC INTEREST.

Provision of law for the institution of suits against Government.

MR. M. RAMACHANDRA RAO.—Sir, I beg to move the following resolution:

"That this Council recommends to Government that steps be taken to introduce at an early date adequate provision of law for the institution of suits against Government."

This resolution deals with a very important subject from a constitutional point of view. Representations for suitable provisions of law have in the past been repeatedly made in the Representative Assembly but the Government has not yet answered them now except at the last meeting did not indicate any early prospect of success. The complaint of the absence of legal provisions for the institution of suits against Government is a long standing one and the necessary amendment of law is long due. I venture to assure you, sir, that it cannot be said either that the Government has no real grievance or that there is no urgency in amending the law, merely because the representations of the people have not so far been wider in scope or more numerous.

The first regular legislative enactment in British India prescribing the procedure to be followed in suits against Government was the Code of Civil Procedure Act VIII of 1859, and the next enactment was Act X of 1877. The latter was introduced into the Territories of Mysore by Notification No. 47—dated the 27th May 1878 of the Foreign Department of the Government of India subject to certain modifications, the chief of which being the omission of provisions relating to suits against Government. After the Rendition, Regulation II of 1881 was passed by our Government on the lines of the British Indian Act XIV of 1877 but without the provisions regarding suits against Government. Subsequently this Regulation was repealed by Regulation III of 1911, which is the Code of Civil Procedure in force and which follows the British Indian Code (Act V of 1908) except in so far as it relates to said provisions. Therefore, since the year 1878, there is no law in our State which lays down the procedure in respect of suits by subjects of the State against Government though throughout, the law has made provision for suits by Government against their subjects.

So far as the case-law in Mysore on this point is concerned, there are only two cases reported in our Law Reports. They are XII Mysore L. R. 145, XVIII C. C. R. 92, and XXII M. C. C. R. 277. In the first of these cases, an officer of Government, when sued for an illegal act, put forward the defence that he had acted on behalf of Government and as such was not liable to be sued. But the plea was rejected. It illustrates the tendency on the part of the Government officers to avoid the consequences of their actions by taking shelter under the absence of a provision of law for private individuals to sue Government. The second case was really a hard one and the party had to go without a remedy, because there is no method known to our law by which he could seek it. In the third case, that eminent Judge who is now at the head of the Judiciary in Mysore, Sir Leslie Miller, has observed that as suits against Government are recognised by Sections 221, 222, 225 and 230 of the Land Revenue Code and as provision is made in article 17 of the Schedule of the Limitation Regulation for suits against Government for land acquired for public purposes, it would seem desirable that the Legislature should provide some procedure for use in those suits.

In Halsbury's Laws of England, Volume I, page 17, the law in England with regard to legal proceedings against the Crown and its servants, is stated to be in the following terms; "Though the Sovereign may, if he sees fit, sue a subject in his own Courts, no suit can be maintained against him in such Courts by a subject, for it is a maxim of our law that 'the King can do no wrong.' If the act complained of by a subject be in the nature of a personal tort, his remedy is against that servant of the Crown who actually committed or authorised it, for as such act, even if committed by the King personally, could not in law be attributed to him, so it must be assumed that he did not authorise its commission by one of his servants. If, however, the subject's cause of complaint be an injury to, or deprivation of, property, or the breach of a contract made by, or on behalf of, the Crown, redress may be sought by means of the statutory remedy known as a petition of right against the King himself or the particular Government Department concerned. There are, however, certain colonial statutes which expressly give a right of action against the Crown. Where the Crown sues, a subject may apparently plead a cross-claim or set-off."

Crown servants and officers of public departments may sue and be sued like any other persons; but their liability in tort and contract is governed by different rules. A Government official or servant is liable for torts committed or expressly authorised by him as such official or servant, but not for torts resulting from the negligence or unauthorised acts of his subordinates, for such subordinates are not his servants, but those of the Crown. Again, a public servant cannot be made personally liable on a contract made by him on behalf of the Crown, nor can the public revenue be reached by means of a suit against him."

In a note expressly written by Mr. G. Stuart Robertson, author of "Civil Proceedings by and against the Crown" for the Annual Practice for 1921 and published in Vol. II of that book at pp. 1906-7 under the heading "Where Petitions of right will and will not lie," we find a most recent and authoritative list of matters connected with the petition of right. We cannot do better than select for our purposes from the list such of the matters as may be considered appropriate. The said note runs thus:—

"Petition of right is the process by which recovery is made from the Crown of property of any kind including money, to which the claimant (here known as the suppliant) is legally or equitably entitled, except in cases where the process is ousted by some statutory method of recovery. It has been held to lie for the recovery of corporeal hereditaments, of incorporeal hereditaments, of chattels real, of specific chattels or their value and of money claims. Among money-claims may be specified claims for liquidated sums due under contracts, for payment for services rendered, for unliquidated damages, for breach of contract, or for breach of warranty; for the personal estate of deceased intestates, for the repayment of duties paid of various kinds, for tolls, for compensation for land taken or for damage under a Statute."

Provision is also made for petitions of right as to colonial stock by the Colonial Stock Act, 1877, (40 and 41 Vict. C. 59), S. 20.

Petitions of right will not lie where another statutory procedure is provided under the National Debt Act, 1870 (33 and 34 Vict. C. 71), S. 55, or under the Income Tax Acts. Nor will it lie for a claim in tort; nor in general, for claim by military, naval, or civil officers of the Crown in respect of pay, pension, or damages for loss of office; nor for land situated abroad, which is not vested in the Crown for Imperial purposes, nor for money alleged to be payable by the Crown under treaty, or by the Crown as successor of a conquered State."

In British India, the law in respect of suits against Government is somewhat different. The provisions in the British Indian Civil Procedure Code do not by themselves give any right of action but only declare the mode of procedure when a right of action has arisen. Further, they do not enlarge, or in any way affect the extent of the claims or liabilities enforceable by or against the Secretary of State for India in Council which originally depended on the provisions of the Government of India Act, 1858 (21 and 22 Vict. Ch. 106), Section 65. That Act has been repealed by the Government of India Act, 1915 (5 and 6 Geo. 5. Ch. 61) and Section 32 thereof corresponds to Section 65 of the repealed Act. The said Section 32 enacts that "The Secretary of State in Council may sue or be sued by the name of the Secretary of State in Council as a body corporate. Every person shall have the same remedies against the Secretary of State in Council as he might have had against the East India Company, if the Government of India Act, 1858 and this Act had not been passed." According to the latest view, the Secretary of State in Council is liable to be sued, as successor of the East India Company, for every act which is not an "act of State," whether it is an act which could have been done by a private individual or trading corporation or not.

In some of the Native States of India, provision is to be found for the institution of suits against Government in the Civil Procedure Code in force in those States. In Travancore and Cochin, suits by or against Government may be instituted by or against the Dewan of the State. In Baroda also suits may be filed against the Sircar. The procedure to be followed in Baroda in Civil suits against Government and Government servants was added to the Baroda Civil Procedure Code by Act VII of Samvat 1963, (October 1907.) The code is published in Gujarati. Through the assistance of a valued friend I have got the portion of the Code relating to suits against Government translated into English. Section 622 of the Code lays down that unless otherwise expressly stated, suits of a civil nature are competent against Government or Government officers. Section 623 provides that no suit lies against Government or officer of Government for acts done or purporting to be done in the exercise of sovereign powers. Section 624 sets out matters in respect of which suits do not lie against Government. Section 625 gives a list of matters with regard to which suits are cognizable against Revenue officers of Government. Sections 626 to 630 deal with acts for which Government or Government officers could not be sued. The Baroda Code and Mr. Robertson's note referred to already may afford valuable assistance to our Government in the initiation of necessary legislation.

The conditions in Mysore differ entirely from those prevailing in British India so far as suits against Government are concerned, but they approximate to those prevailing in England. In England a subject feeling himself aggrieved may proceed to seek redress by Petition of Right. The proceedings upon the Petition of Right have been simplified by the Petitions of Right Act, 1860, (23 and 24 Vict. C 34) and they may now be instituted in any division of the High Court. They are left at the Home Office of His Majesty's fiat and upon that being obtained, the subsequent proceedings follow the practice in ordinary actions as far as possible. But in Mysore we have no such right. The right must first be given by some legislative enactment and then to enforce that right, suitable provision will have to be inserted in the Civil Procedure Code. In my opinion, it will not do merely to amend the Civil Procedure Code as that would only prescribe the procedure for the enforcement of a right, which at present does not exist. There is also one other view which may be urged with some force. Our Government have copied the Bombay Land Revenue Code and the British Indian Limitation Act, both of which contemplate suits against Government in respect of certain matters. The Mysore Railways Regulation IV of 1894 has followed the provisions of the

Indian Railways Act IV of 1879, and the definition of "Railway Administration" therein shows that suits for compensation will have to be instituted against Government as most of our Railways are now administered by the State. If our Civil Procedure Code is amended by the insertion of a provision for suits against Government, then suits contemplated under the enactments referred to can be prosecuted in our courts. But when once the procedure is prescribed it will apply not only to the aforesaid classes of suits but also to all other kinds of suits that may be instituted against Government. What those other kinds of suits may be, we have no law now to guide us. As I have said already, in England, for a subject to proceed against the Crown, there is the ancient common law remedy by Petition of Right which is said to owe its origin to Edward I. In British India there is the Government of India Act, 1915 (5 and 6 Geo. 5. Ch. 61), which forms the substantive law creating the right in the subject to proceed against Government in certain matters.

If we stop at amending the Civil Procedure Code, then the Civil Courts would have to determine in each individual case whether the cause of action alleged in the plaint is a proper one or not and take for their guidance the principles underlying the right of a subject in England to proceed against the Crown by Petition of Right. But to leave matters in such an indefinite form does not seem advisable.

It is hardly necessary to state that the existing provisions for suits against public officers in their official capacity do not ensure all the relief that a party may be entitled to get in respect of his complaint, and will not help him to reach the public treasury as of right. In cases in which Government do not undertake the defence, there are chances of a private party not securing relief even if he should succeed in establishing a right thereto in courts of law. The public officer may die, retire or become insolvent. In all such cases, the decree which a party may obtain will be valueless. If the public officer dies during the course of the proceedings, the suit abates. There have been such instances in our courts. One such instance was brought to the notice of Government by the representative member for Shimoga in the Dasara Assembly for 1920.

The business of Government in several departments is daily getting more and more commercial. In the Electrical Department, the sale and the purchase of electric power are conducted on purely business lines. In the Industries and Commerce Department, transactions of Government with private individuals resemble those of creditors and debtors. For locating schools and offices the Education Department enters into various kinds of agreements with house-owners. In the Muzrai and Revenue Departments, management of landed properties is taken up by Government. The bonds in the case of the New Loan are executed in the name of the Government of Mysore and there are many other matters too numerous to mention in which Government have dealings with private parties. It cannot be said that in all these dealings the agents of Government will always be in the right. Very often the subjects of the State may have causes of complaint but without any means of redress. It is but right that proper provisions of law should be created to enable such subjects to seek remedies in Courts of law in respect of their complaints.

In conclusion, I would say that we have long been enjoying the proud distinction of being the citizens of an enlightened and progressive State and that by accepting the resolution and thereby satisfying the present legitimate demand of the people, Government will only be enhancing their claims to that distinction.

MR. B. N. VIJAYADEVA:—Sir, I am very happy to second the resolution so ably moved by my learned friend Mr. M. Ramachandra Rao.

In England, sir, the law is that any person natural or artificial may sue and be sued. To this maxim there are a few exceptions. One of such exceptions is suits against the Crown. I need not go into the other exceptions. The principle involved in this exception is this:—

Firstly, "The King can do no wrong" and secondly that the King cannot be made a party and answerable in his own courts and the third is that public revenue will be affected by such a trial.

But, if I understand the principle of the constitution of England aright, the state of affairs was not the same before Edward 1. The opinion has been expressed

by English Lawyers that such suits could have been filed against the Crown before Edward 1. But afterwards the right was restricted. It was a long struggle from the time of Edward 1 till 1860 when the Petition of Rights Act came into existence (22 and 23 Vict. Ch. 34). Thanks to the labours of the English Lawyers and the Petition of Rights Act of 1860, by way of Petition of Right many of the grievances of the people against the acts of the Crown or its servants can be remedied in England.

In case of a personal tort a suit lies against the public servant.

In case of tort to property or a breach of contract made by or on behalf of the Crown there is a remedy by way of Petition of Right against the Government Department or King. A Petition of Right will lie for recovery of land, of corporeal and incorporeal hereditaments, for the recovery of properties of any kind including money or damages arising out of a breach of contract from Crown, or for services rendered. (Cf. Halsbury Vol. 10 p. 27.) There are a few exceptions in cases of suits for services rendered for example, no suit lies for dismissal, for according to English Law all Military, Naval and Civil Officers are dismissible at will.

That being the state of affairs in England, I find that on account of the Petition of Rights Act which is the process for the recovery of any kind of property from the Government, we find almost all the public grievances in England have been satisfied. It is erroneous to suppose that a Petition of Right will be on matters which are of grace and not of Right.

As regards the Colonies they have taken a step in advance of the British Constitution.

New South Wales Act, 39 Vict. No. 38, and Strait Settlement Crown suits Ordinance 1876, expressly give a right of action against the Crown; and these statutes are far more liberal in spirit than what is to be found under the British Constitution.

Now coming to British India, we sue the Secretary of State because he is a successor of the old East India Company which was a trading corporation and which was being sued formerly.

* O'Kinealy's Civil Procedure Code contains, under Section 422 a list of cases in which suits have been filed and allowed against Government. It will be found that the classes of suits allowed are very wide there. My friend has referred to the law prevalent in Baroda. I am very thankful to him for giving me a copy of the translation of the Guzarati work. I find from what is said there that Baroda has gone far in giving the right to the citizens to file suits against Government in very many cases.

Coming to our own State there is provision for suits being filed against Government, only under the Land Revenue Code and under the Land Acquisition Regulation. But the rights are limited. The difficulties existing here are, that the rights are not clear, much less the remedy. In other words, provision must be made both in the Substantive and Adjectival law.

As my friend has observed, our Government is becoming more and more commercial and they are entering into commercial relations with the public. The Government have floated a loan which has been largely subscribed. There must be provision for filing suits against Government if it is found necessary. I do not mean to say that the Government will not carry out their undertaking. When a National Debt was raised in England the National Debt Act of 1870 had to be passed giving the statutory remedy to the public to bring actions, if necessary, against the Government. Our Government, further, through its several departments which are semi-commercial (like the Railway and Electric Departments), enters into daily relationship with the public. It will be a great hardship and injustice done to the subjects, if provision is not made for affording legal remedy to the grievances, if any, of the public.

Time has, I believe, come when something must be done to allay the grievances of the public which have been voiced by their representatives in the Representative Assembly. As a seconder I think I have spoken at length and I heartily second the resolution that has been so ably moved by my friend Mr. Ramachandra Rao and I trust the Government will accept the resolution.

RAJASABHABHUSHANA DEWAN BAHADUR K. P. PUTTANNA CHETTY.—Sir, I have great pleasure in supporting the motion so ably moved by my friend

847
Mr. Ramachandra Rao and seconded by Mr. Vijiya Deva. This is a question in which the public are deeply interested. It has come up again and again for discussion before various public bodies.

To an Indian mind the right to sue the Crown appears to be rather anomalous. Throughout the World such a right has been conceded to the subjects in some form or other. In British India the right has been given under the fiction that the Secretary of State being the successor to the late East India Company may be sued for some acts done on behalf of Government. Whatever may be the rationale, the right has been conceded, and there we see a very humble individual, even a constable, suing the Secretary of State in Council for some act done on behalf of Government. Such a right I find, from the enumeration made by Mr. Ramachandra Rao, has been conceded in several Indian States. I think it is time and is even overdue, as Mr. Ramachandra Rao said, that such a reform should be introduced in the law of Mysore. The absence of such a law in a State, which claims to be civilised and progressive is, I take it, a denial of justice to the subjects of the State.

I may say by way of supplementing what Mr. Ramachandra Rao has said that all contracts in Mysore are entered into in the name of Government. The Executive Engineer does not enter into contract for building work, as between the Executive Engineer and the contractor, but as between the Government of Mysore and the contractor. In case of injustice on the part of the Department, the party cannot take legal action against Government and it is a very great disadvantage. For example, in railway contracts, we know what delay and trouble there was in the settlement of their claims.

MR. D. G. DANIEL.—It is not a contract between Government and contractor. It is a works agreement.

MR. B. N. VIJAYA DEVA.—It is worse still.

RAJASABHABHUSHANA DEWAN BAHADUR K. P. PUTTANNA CHETTY, C.I.E.—The contractors' claims have been disposed of in a way.

MR. A. R. BANERJI.—The claims have not yet been disposed of. The matter is under arbitration.

RAJASABHABHUSHANA DEWAN BAHADUR K. P. PUTTANNA CHETTY, C.I.E.—As regards the recent State loan, I am aware that enquiries were addressed by would-be investors outside the State as to whether a suit lies against the Government of Mysore, and they were informed that no such suit lies against Government. I think they were very much surprised; but this happened after the loan was subscribed and not before. Some person wrote in the public press that suits against Government did not lie and hence the enquiry and it had to be answered. All bonds are made in the name of the Government of Mysore. I do not suppose that the Government will ever repudiate them. But as a matter of fact no legal remedy lies to the party as against the Government.

Then, it may be said that the grant of such a right to the people will detract from the prestige of the Sovereign. I venture to think that far from detracting from such prestige it will go to enhance the prestige of the Sovereign and the State ruled by him when he is pleased to condescend to grant such a right to the public. That is why it is called the 'Petition of Right.' The petitioner applies not as a man demanding his right but as a man who supplicates for what the Crown has been pleased to concede as a matter of grace. Any civilised State must grant this right. The day is passed when the absence of such a provision can be looked upon as a matter of course.

I think the Government will be very well advised in generously accepting this resolution and giving the people the relief which they have long sought for.

RAJAKARYAPRASAKTHA RAO BAHADUR M. SHAMA RAO.—Sir, I beg to support Mr. Ramachandra Rao. It contains very valuable arguments in support of the concession asked for, *viz.*, permitting suits in Courts, against Government. It is true that to an Indian mind suits against the Government in Native States in their own courts is somewhat of a novelty but I think that is due to the Executive and Legislative functions being combined in one and the same agency but we have now emerged into a different atmosphere. In England there is the maxim that the 'King can do no wrong' and the very same maxim we may take as applying to our own

country also. But there is this difference, however, between the two countries. In England, the King practically takes no part in the affairs of Government except giving his consent to legislative measures. But, here, His Highness the Maharaja takes part in the daily administration of the country and all schedule subjects go to him for orders. So the question is whether His Highness can be sued in his own courts. To a loyal subject of His Highness the Maharaja, such an idea of suing His Highness is most offensive, but at the same time there should be nothing to prevent a suit being filed against the Government though not against His Highness the Maharaja. There are various matters which do not go to His Highness and which the Executive Officers of Government deal on their own account. In such matters, I do not see why a suit against Government should not lie. There may be certain occasions when matters included among the scheduled subjects that go to His Highness may have to be contested in a Court of Law. Provision should be made to except such acts when expressly sanctioned by His Highness the Maharaja. Just as we have got scheduled and non-scheduled subjects for the conduct of Government, perhaps a schedule of subjects may be prepared in which the people possess the right to sue the Government.

No doubt, it looks to me that there is a little difficulty in the way, but at the same time, there is a desire everywhere for the privilege to sue Government and with the proviso that we safeguard that maxim that "the King can do no wrong," I think the time has come for the Government to grant the concession.

RAO BAHADUR M. C. RANGIENGAR.—Sir, in connection with the new Civil Procedure Code introduced in the year 1911, I had the honour to serve on the Select Committee. During the discussion in the Select Committee I brought up the subject that suits against Government ought to be provided for in the new Civil Procedure Code. The Member (late Mr. H. V. Nanjundia), who was then in charge of the Bill took time to consider and after 3 or 4 adjournments of the meetings of the Select Committee he finally gave as his considered opinion, that he would not consent to the introduction of such a provision in our Civil Procedure Code. He was not pleased to assign reasons for it. As a Member in charge of the Bill he could not see his way to accept it, however much he sympathised with the proposal. The subject was then dropped and subsequently year after year, as we are aware, the people have been asking for the concession.

My own opinion is that the rights should be conceded subject to certain conditions.

- (1) There should be no suit against Government, for Acts of State.
- (2) There should be no suit against the august person of His Highness the Maharaja.

In all other cases there should be provision for suits against Government or public officers.

There are two classes of suits,

- (a) Against Government Officers ;
- (b) Against Government.

In British India the Civil Procedure Code contemplates both.

As against Government Officers there is provision in our Civil Procedure Code.

But there is none for suits against Government. It may be asked, as to what kinds of suits should be filed against Government and what against Government Officers. This is a matter which requires the consideration of Government.

The difficulty which people have been experiencing is pointed out by my friend Mr. Ramachandra Rao. A suit may be filed against a Government Officer. If that officer is transferred or retired difficulties arise. The office may change hands any number of times. There will be any number of amendments as regards the defendant. In one case which I myself conducted there were half a dozen amendments. Has the plaintiff the right to bring the successor in office on record as the defendant? What has to become of the officer originally responsible for the act? These questions used to arise very frequently and every time the matter had to go before the Chief Court, and the Chief Court had to decide the question. To obviate all these difficulties it is now necessary that suits against Government should be permitted. Then it will be only one officer that is sued as in British

India. The suit will proceed without any hitch whatever. Such a course is very necessary in the State.

As to the cases in which suits should not be filed against Government, it is for Government to decide after carefully considering the question and examining the practice prevalent in other States and Governments.

With these remarks, I support the resolution of Mr. Ramachandra Rao.

MR. B. V. RAMASWAMY CHETTY.—Sir, I support the resolution that has been so ably moved by Mr. Ramachandra Rao and supported by Messrs. Vijayadeva, K. P. Puttanna Chetty and Shama Rao.

There are, I think, two kinds of suits which, we find from our experience, it is possible to bring against Government Officers. Suits may be brought against Government Officers in which grievances are due to the officers having failed to act in conformity with law. For this, Government cannot be held responsible.

There are circumstances in which suits can be filed against Government servants as agents of Government. For example the Railway Engineer gives certain contracts as head of the Railway Administration and large sums of money fall due. There occurs some delay in the payment of dues to contractors. It cannot be said that the grievance to the party was caused by the officer's negligence, but by Government. He acts as an agent of Government. In a case like that, as the law now stands, the contractors cannot sue Government.

Two or three years ago there was a case filed against the Municipality and the Government. Mr. K. P. Puttanna Chetty represented the Municipality and Mr. C. S. Doraiswami Iyer appeared for Government. Mr. Plumer dismissed the suit against Government on the ground that there was no provision under the law, for the institution of suits against Government.

Previous speakers including the mover stated that the right of suing Government is conceded to private individuals in British India and in England. In a case where the Chief Commissioner of Coorg was sued, the Chief Court ordered that the Secretary of State for India should be the defendant and not the Chief Commissioner.

But unfortunately when the Civil Procedure Code was introduced in our State, this provision was not adopted. Although Mr. M. C. Rangiar was for the adoption of the provision, other officers on the committee objected to it. I don't know on what grounds they did so.

As in Baroda, the right may be given in certain cases. There may be restrictions regarding certain suits, and freedom in others. The point has been urged in the Representative Assembly, the Legislative Council, and other places. Difficulties of the subjects for want of this provision are great, and the granting of the same is absolutely necessary.

MR. H. VENKATRAMAIA.—Sir, I beg to support the resolution moved by Mr. M. Ramachandra Rao. After what has been said by him and other speakers, I have very little to say. There are various instances in which Government have sued individuals for breaches of contract. I believe there are some suits pending. People who have entered into contract with Government and failed to fulfil the terms of contract have been sued and decrees obtained. In these circumstances, I do not suppose it would be right to deny to the individuals the right to sue the Government, if they do not fulfil their part of the contract. So, I beg to support the resolution moved by Mr. M. Ramachandra Rao.

MESSRS. H. KRISHNA RAO AND VENKATESAIA supported the resolution.

MR. ANANTHIAH SETTY.—Mr. Ramachandra Rao has clearly brought out in his able speech the need for the introduction of a provision for the institution of suits against Government, in the Civil Procedure Code. Other speakers have also spoken in support of it and I have no more to say. I only support the resolution as has been moved by Mr. Ramachandra Rao.

MR. MIR HAMZA HUSEIN.—Sir, as the members are aware, the question was brought up at the last meeting of the Representative Assembly. The remarks of

the Dewan Saheb, in his concluding speech offer, I think, a sufficient resolution that has been so ably moved by my friend Mr. Ramachandra Rao. Dewan Saheb said:—"Turning to the judicial subjects, I am glad to be able to tell you that the question of permitting suits against the Government which has been repeatedly urged by the Assembly, has nearly reached a final stage and a decision may be expected within the next few months." I may state here for the information of members that the Bill upon the subject is in the course of preparation. The form of the bill, the classes in which, and the limitations subject to which, the right should be conceded, are the points which are now engaging our attention.

Perhaps, the members are aware—and I believe it has been abundantly made clear by the speeches—of the law prevalent in England; and there, an unrestricted right of suit against the Crown does not exist. The remedy lies by way of 'Petition of Right' and the Courts cannot take cognisance of any claim without the previous sanction of the Crown. The petition is presented to the Home Secretary and after consultation with the Attorney General, a fiat is issued granting permission to sue Government. In a democratic country like the United States of America, the subjects have no right of suit against the State under the Constitution of the country. It is only by means of Special Enactments that the right has been conceded and a special tribunal called the Court of Claims is created for the trial of these suits. In British India, however, suits can be brought freely against the Secretary of State as has been pointed out by Mr. Ramachandra Rao, but this is due to the fact that the East India Company which preceded the present Government, was a trading corporation which could sue and be sued in ordinary courts.

It will be seen that the matter of legislation is beset with certain difficulties which will have to be very carefully considered and solved. I may assure the members that the Government are in sympathy with the resolution and we are taking early steps to introduce a suitable measure into the Legislative Council. If Mr. Ramachandra Rao accepts a slight amendment, and if the word "suitable" is substituted for the word "adequate" in the resolution, Government will have no objection to accept the resolution.

MR. M. RAMACHANDRA RAO.—Sir, I have not the least objection to accept the amendment. I beg to express my best thanks to my non-official colleagues who have lent their weighty support to the resolution. I am also thankful to Government for their having accepted the resolution in the amended form.

The council was then adjourned *sine die*.

C. ABDUL GHANI,
Secretary,
Mysore Legislative Council.